REMARKS

Claims 26, 28-35, 40-42, 48, 51, and 53 remain for prosecution in the present application.

Allowed Claims

Applicants acknowledge the Examiner's allowance of claim 51.

35 USC §103 Claim Rejections

Independent claim 26 has been rejected under 35 USC §103 as being unpatentable over Shah 4,375,858 in view of Akers 5,449,078 and in view of Summers GB 2,108,095. Independent claims 30, 40, and 53, and dependent claims 28, 29, 31-34, 41, and 48 have been rejected under 35 USC §103 over Shah in view of Akers and in view of Summers as applied to claim 26 and further in view of Swartzbaugh 4,399,920. Dependent claims 35 and 42 have been rejected under 35 USC §103 over Shah in view of Akers and in view of Summers and in view of Swartzbaugh as applied to claim 30, and further in view of Puresevic 4,523,688. Reconsideration and withdrawal of the rejections is respectfully requested.

A *prima facie* case of obviousness requires a proposed combination of references to teach or suggest all elements of a rejected claim. See *CFMT, Inc. v. Yieldup Int'l Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)). In this case, it is clear that there are unreconciled differences between the proposed combination and Applicants' claims and, thus, the Office Action does not set forth a *prima facie* case of obviousness. Also, under MPEP § 2142, if the Examiner's burden to produce a *prima facie* case of obviousness is not satisfied, then an applicant is under no obligation to submit evidence of nonobviousness.

Applicants' independent claims 26, 30, 40, and 53 each recite, in one form or another, *inter alia*, a closure skirt having a stepped profile including a first portion on which at least one internal thread is disposed and a second portion stepped to extend radially outwardly from the first portion and having an outer diameter larger than that of the first portion and an inner diameter larger than that of the first portion.

As shown at right, Shah discloses a container body 19 having a neck portion 16 with threads 20 and holding lugs 15 axially spaced from second ends of the threads 20. Shah discloses that the lugs 15 have cam surfaces 14 and stops 20 (sic) that circumferentially overlap the second ends of the threads 20. Shah also discloses a closure 18 applied to the container body 19 and including a top 23, an outer flange 24, 26, and a flange rim 17 including rectangular locking tabs 11 corresponding to the holding lugs 15 of the container body 19. The flange rim 17 also includes friction tabs 12 spaced between the locking tabs 11 to provide an audible indicator of locking engagement.

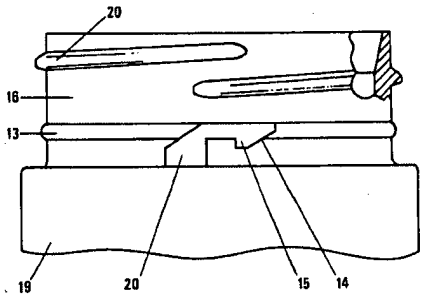

FIGURE 7

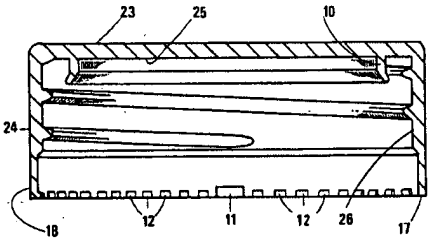

FIGURE 8

Although Shah discloses the closure 18 having threads 20 disposed on a first portion 26 having a smaller diameter than a second portion 17 that carries tabs, but Shah fails to teach or suggest, *inter alia*, that the second portion 17 itself is stepped to extend radially outwardly from the first portion and has an outer diameter larger than that of the first portion. In fact, the closure 18 of Shah is not stepped and has an outer diameter that is uniform over the first and second portions 26, 17.

Akers does not cure the aforementioned deficiencies of Shah. Akers discloses a container 10 including a camming latch 21 having a cam receiving notch 22, and a cap 11 including a lock lug 20 which is guided into the notch 22 upon rotation of the cap 11 on the container 10.

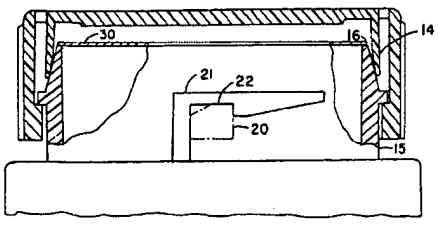

FIG. 6

But Akers fails to teach or suggest, *inter alia*, a closure skirt having a stepped profile including a first portion on which at least one internal thread is disposed and a second portion stepped to extend radially outwardly from the first portion and having an outer diameter larger than that of the first portion and an inner diameter larger than that of the first portion. Instead, like Shah, Akers disclose its cap 11 as having a uniform outer diameter and, thus, does not have a second portion stepped to extend radially outwardly from a first portion.

Summers does not cure the aforementioned deficiencies of Shah and Akers. Summers discloses a container including a spout 22 having a detent means 21 including sawtooth ratchet teeth 24, 25, and a closure cap 23 including an outer wall 28 having compression tabs 30, 31 and inwardly protruding lugs 33, 34.

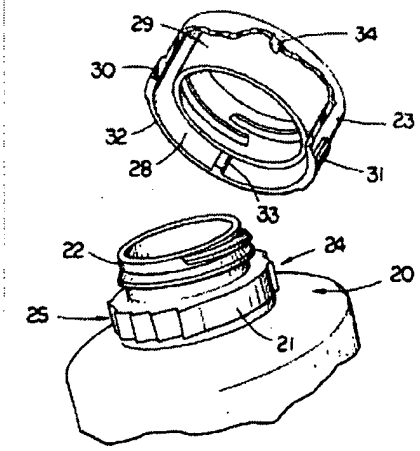

FIG. 1

But Summers fails to teach or suggest that the outer wall 28 of the cap 23 includes a stepped profile. And Summers certainly fails to teach or suggest that the non-existent stepped profile of the cap 23 includes a first portion on which at least one internal thread is disposed. In fact, Summers discloses that threads are disposed on an inner wall

29 but not the outer wall 28 having the lugs 33, 34. Summers also certainly fails to teach or suggest that the non-existent stepped profile of the cap 23 includes a second portion stepped to extend radially outwardly from the first portion and having an outer diameter larger than that of the first portion and an inner diameter larger than that of the first portion.

In the Office Action it appears to be conceded that Summers fails to teach or suggest a stepped profile of a ***closure*** skirt as claimed by Applicants. Instead, it is asserted in the Office Action that Summers discloses the ratchet teeth 24, 25 on a stepped surface of Summers' container. It is further asserted in the Office Action that it would have been an obvious matter of design choice to modify Shah's container to include Shah's container neck lugs on an outward stepped surface of Shah's container neck.

Even if it were somehow desirable to modify Shah's container for use with Summers' stepped ratchet teeth, the combination still would not result in Applicants' claimed subject matter. This is because the combination would lack Applicants' particularly claimed stepped closure skirt. Simply put, the stepped container neck of the proposed combination is not the same as Applicants' claimed stepped closure skirt. More simply, a container is not a closure.

Swartzbaugh does not remedy the deficiencies of Shah, Akers, and Summers. Swartzbaugh identifies a problem with child resistant packages, including difficulties in removing a closure from a container. As a solution, Swartzbaugh teaches a closure that is more readily removable from a container. Specifically, with reference to FIGS. 2 and 3 of Swartzbaugh shown above, Swartzbaugh discloses a container 20 having projections 25

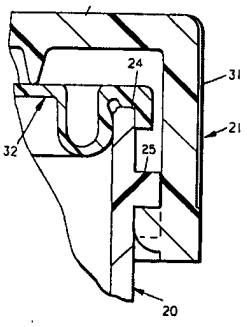

FIG. 2

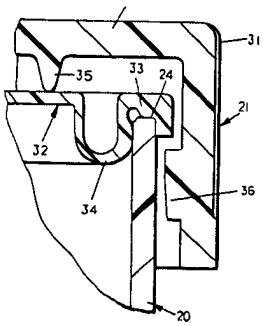

FIG. 3

with cam surfaces 26 and radial and axial surfaces 27, 28 defining shoulders, and a closure 21 including a skirt 31 having radially inwardly extending rectangular locking lugs 36 and cam lugs 37 with cam surfaces 38. During removal of the closure 21 from the container 20, rotation of the closure 21 causes the cam lugs 37 to engage the projections 25 so as to cam the closure 21 axially upwardly for ready removal of the closure 21 from the container 20.

But Swartzbaugh does not disclose, *inter alia*, a closure skirt having a stepped profile including a first portion on which at least one internal thread is disposed and a second portion stepped to extend radially outwardly from the first portion and having an outer diameter larger than that of the first portion and an inner diameter larger than that of the first portion. Instead, like Shah, Akers, and Summers, Swartzbaugh discloses its closure 21 as having a uniform outer diameter and, thus, does not have a second portion stepped to extend radially outwardly from a first portion.

Applicants' independent claims 26, 40, and 53 also each recite, in one form or another, *inter alia*, a container having a cylindrical finish with an open end, an external thread including a first end adjacent to the open end and a second end spaced from the open end, and at least one external lug separate from said at least one external thread and projecting radially outwardly from said finish adjacent to and circumferentially spaced from the second end of the thread.

Although Shah discloses holding lugs 15 axially spaced from a second end of a thread, Shah fails to teach or suggest that the holding lugs 15 are circumferentially spaced from the second end of the thread. Instead, Shah discloses that the lugs 15, including cam surfaces 14 and stop portions 20 (sic), circumferentially overlap the second end of the corresponding thread.

Applicants note that the Office Action failed to address the above argument, which was previously presented during prosecution.

And Akers, Summers, and Swartzbaugh fail to cure this deficiency of Shah, because those references do not disclose a container having both lugs and threads. Although Summers discloses sawtooth ratchet teeth and threads, those ratchet teeth are not Applicants' claimed lugs nor are they circumferentially spaced from second ends of Summers' threads. To the contrary, as shown in FIG. 1, the ratchet teeth overlap the ends of the threads.

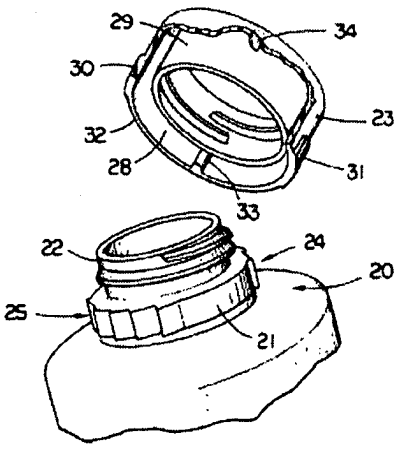

FIG. 1

Finally, Puresevic does not cure the deficiencies of Shah, Akers, Summers, and/or Swartzbaugh. Puresevic is cited for its teachings regarding a biasing ring 10 of a closure device 1. But, like the other applied references, Puresevic fails to disclose a skirt on a closure having a stepped profile that includes a first portion and a second portion stepped radially outwardly from the first portion and having an inner diameter larger than that of the first portion on which at least one internal lug is disposed, as recited in Applicants' independent claims 26, 30, 40, and 53. Puresevic also fails to teach or suggest a container having a cylindrical finish with an open end, an external thread including a first end adjacent to the open end and a second end spaced from the open end, and at least one external lug separate from said at least one external thread and projecting radially outwardly from said finish adjacent to and circumferentially spaced from the second end of the thread as recited in Applicants' independent claims 26, 40, and 53.

Therefore, the alleged combinations of Shah, Akers, Summers, Swartzbaugh, and/or Puresevic does not teach or suggest one or more limitations as recited in Applicants' independent claims 26, 30, 40, and 53. Thus lacking one or more significant elements of Applicants' independent claims 26, 30, 40, and 53, the alleged combination(s) cannot possibly yield or render obvious the subject matter of those claims. For at least these reasons, independent claims 26, 30, 40, and 53 define patentable subject matter over all cited references.

The remaining application claims are dependent claims, and are allowable both by reason of dependency from the independent claims for reasons set forth in detail above, and because of the additional novel limitations set forth therein.

Conclusion

It therefore is believed and respectfully submitted that all claims 26, 28-35, 40-42, 48, 51 and 53 remaining in the application are allowable at this time, and favorable consideration is respectfully requested.

Please charge any fees associated with this submission to Account No. 50-4417 (Rexam Plastic).

Respectfully submitted,

REISING ETHINGTON P.C.

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